

PAYING OFF TRAFFICKERS: A COSTLY AND DANGEROUS PRECEDENT

Photo Credit: Toby Smith/EIA, 2009

"The economic success of traffickers has an impact on the moral aspect of this illegal activity."

- Madagasacar, 2016.

SC66 Doc. 46.2

WHY PARTIES MUST REJECT THE BUSINESS PLAN PRESENTED BY MADAGASCAR AT SC70

The revised "Stockpile Verification Mechanism and Business Plan" (hereafter "Business Plan") presented by Madagascar to the Standing Committee (SC) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at its 70th meeting (SC70) fails to resolve serious concerns raised by the Secretariat, by Parties at SC69, and by international experts.[1,2] These include the absence of financial oversight on revenues from the stockpile sale and the lack of monitoring of the sale's impact on wild populations of *Dalbergia spp.* and *Diospyros spp.* These elements are crucial, particularly in the context of presidential elections in 2018 and legislative elections in 2019. The lack of effort to recover hidden stockpiles, which represent over 90 percent of total stockpiles, is also worrying.

Alliance Voahary Gasy (AVG), the Environmental Investigation Agency (EIA) and Transparency International (TI) strongly oppose the proposed mechanism to pay off timber traffickers. Not only does "indemnification" represent an unreasonable burden to the overall budget (over 80 percent), but the Convention would be legitimizing what is effectively an extortion process, perpetuating the vicious cycle that the "zero stock" goal aims to disrupt. Under this plan, for example, Mr. Roger Thunam, a notorious timber baron exposed by EIA undercover investigators almost ten years ago, would now be eligible for at least half a million US dollars in payments for Malagasy authorities to get control of his illegal stockpile.[3,4] This "indemnification" sets a dangerous precedent for future stockpile sales all over the world.

In the Malagasy context of fragile forest governance, the lack of enforcement measures in the plan is another critical problem, particularly as new findings indicate that organized criminal networks remain active in Madagascar, with underground connections to regional leaders, police, customs and even reaching the office of the President.[5]

AVG, EIA and TI strongly recommend that Parties do not approve the Business Plan in its current form at SC70, and requests further revisions to address outstanding concerns, including:

(1) Establishing robust financial oversight mechanisms and impact monitoring on wild populations;

(2) Removing the "indemnification" for timber traffickers – in every shape and form, while increasing enforcement actions against major offenders; and

(3) Developing and implementing a national effort to recover hidden stockpiles as part of phase 1 of the Business Plan.

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BACKGROUND: REJECTION OF THE BUSINESS PLAN AT SC69

At SC69, Parties rejected the Business Plan presented by Madagascar and requested the Secretariat "to continue working with Madagascar and its partners to revise and finalize it, particularly with respect to the observations made in paragraphs 33 and 34 of document SC69 Doc. 49.2," which raised a wide range of issues including transparency, timing, budget, control and monitoring.[6] The SC also agreed to maintain the recommendation for Parties not to accept exports or re-exports of *Diospyros spp.* and *Dalbergia spp.* for commercial purposes from Madagascar.[7]

At SC70, the government of Madagascar is presenting a revised version of the "Stockpile Verification Mechanism and Business Plan".[8] While the new plan provides revised time frames, more detailed procedures and a proposed plan for the distribution of revenues from future sales, other key elements emphasized by the Secretariat and the members of the Standing Committee, and detailed below, are still absent.

NO FINANCIAL OVERSIGHT OR CONTROL MECHANISMS

SC69 requested that Madagascar review its Business Plan, in particular with regard to paragraph 34 of Doc.49.2, which stresses the need for "clarification of oversight mechanisms for the control and dispersal of generated finances (establishment of a dedicated, well-controlled Fund?);" and the importance of "(ii) a robust, independent, and transparent mechanism to ensure that the generated funds are allocated correctly". [9]

AVG, EIA and TI note that the current Business Plan does not present any oversight mechanisms for the control and distribution of funds nor for the use of revenues from stockpile sales. According to the Business Plan (p.45), revenues from sales shall simply "be paid into the Treasury of the Treasury." [10]

This is a critical omission, especially when corruption and misuse of funds is escalating in Madagascar, and the country is ranked as one of the most corrupt in the world.[11,12] Financial transparency and accountability – for example through a well-controlled trust fund administered by multiple stakeholders – is paramount to ensure the success of the operation.


Photo Credit: OCCRP, 2018

NO IMPACT MONITORING OF THE STOCKPILE SALE ON STANDING STOCKS

The critical issue of impact monitoring, cited in paragraph 34 of SC69 Doc. 49.2, is absent from the proposed plan. The Secretariat's report for SC70, while providing what is, in our view, an overly optimistic assessment of the Business Plan overall, states that "[i]t remains unclear if monitoring will be organized to assess the impacts of any sales on illegal logging or timber trafficking activities".[13] The risks for stockpile auctions to further stimulate illegal harvest and increase pressure on vulnerable wild populations has been well documented.[14] Madagascar itself, in its report to SC66, acknowledges: "So far, fast monetary conversion of timber of illegal origin with high commercial value has encouraged further logging."[15]

The absence of impact monitoring procedures ignores and goes against the conclusions and recommendations from the International Workshop on Tree Species in CITES (La Antigua, Guatemala, 7-9 February 2017), which state inter alia that an analysis similar to a Non-Detriment Finding (NDF) should be conducted for any sale to ensure that it does not detrimentally affect the standing stocks.[16]

REWARDING TRAFFICKERS: A DANGEROUS PRECEDENT FOR THE CONVENTION

The proposal to pay off alleged owners of illegal wood in Madagascar in order for the government to get access to the stockpiles, audit and then collect them, is at the heart of the

Box 1. Roger THUNAM: the timber mafia boss exposed by EIA in 2009 who would receive over US$500,000 compensation in 2019


Photo Credit: EIA, 2009

2009: Roger Thunam, one of the most notorious rosewood timber barons in Madagascar, explained in great detail to EIA undercover investigators how he ran his rosewood trafficking operations, getting his most valuable logs from within Masoala National Park.[18,19]

2011: Taking advantage of the window opened by the Malagasy government for individuals to declare their illegal rosewood and ebony stocks, Mr. Thunam reported the ownership of 15,103 rosewood logs, 26,173 rosewood planks, 6,478 ebony logs, and 446,825 ebony planks.[20]

2019: According to the Business Plan presented by Madagascar at SC70, Mr. Thunam will have the opportunity to receive an estimated "indemnification" worth between US$539,525 (payment of US$250 per ton) and US$863,240 (payment of US$400 per ton). These totals do not take into account the 472,998 planks of rosewood and ebony that may be worth several million US dollars in "indemnifications."

AVG/EIA/TI consider that rewarding traffickers, like Mr. Thunam, with millions of US dollars for logs illegally harvested from protected areas, created to conserve globally unique ecosystems, goes against the core principles of the Convention and sets a dangerous precedent.

Box 2. Seven million dollars to audit four percent of the stockpile in Madagascar

Together, stockpiles of seized (under two percent) and declared (roughly ten percent) wood account for about 12 percent of overall stockpiles in Madagascar.[27,28] An estimated two million logs, nearly 90 percent, are still being hidden by loggers and traffickers, or are lying around in rural areas and have never been recovered.[29,30,31]

According to the proposed Business Plan, one-third of seized and declared stockpiles will be inventoried and secured and then sold, which would result in a total of about four percent of estimated existing stockpiles overall. The Business Plan does not contain concrete activities to recover hidden stockpiles in its first phase, as requested by SC69. By shifting the efforts from one-third of all the stockpile in Madagascar to one-third of the seized and declared stocks Madagascar leaves a considerable amount of illegal logs out of the scope.

Business Plan. This idea is recent and was first introduced in 2017.[17] The Business Plan rejected at SC69 proposed a scheme to compensate alleged owners of illegal stockpiles with either US$250 and/or US$400 per ton of wood, resulting in over seven million dollars in pay-backs to traffickers, which represented 86 percent of the budget for the audit mechanism.

The revised 2018 Business Plan presents in essence the same process with the same cost, albeit under a slightly different name, rephrasing the budget item as "Indemnification for Transport Services". The options proposed include "cash payments of 0.25 US dollar per kg of rosewood and ebony" and "dividend payment after official sale of 0.40 US dollar per kg of rosewood and ebony." The total "indemnification cost estimate" in the budget amounts again to over seven million US dollars that will flow back to the traffickers in exchange for the government's unhindered access to the declared rosewood stockpiles. As noted in the Business Plan, the possession of rosewood stockpiles (declared or not) is illegal in Madagascar.

The indemnification accounts for a considerable part of the audit mechanism, 83 percent of its budget. Through this mechanism, timber barons like Mr. Roger Thunam would be entitled to large sums in "indemnification" (Box 1).

The rationale behind this move is an apparent fear of violent reprisal from timber barons, as explained by the government of Madagascar at a multi-stakeholder meeting held in Antananarivo in June 2018.[21] As a representative from the International Timber Trade Organization (ITTO) explained it: "The government is concerned that any efforts to seize the stockpiles by force could lead to social friction and perhaps even violent confrontations."[22] It is alarming that the government feels compelled to pay illegal timber traffickers for fear of violence, while at the same time arguing that these agents should be trusted to render "services" to the stockpile disposal process. This kind of payment amounts to extortion, perpetuates a vicious cycle of environmental and social harm, and shows who is really in control of the disposal process. As Madagascar stated it in its report to SC66: "The acceptance of illegal logging as a rule of society infects the governance of natural resources."[23]


Photo Credit: EIA, 2017

Paying seven million, over 80 percent of the audit budget, to holders of illegal wood is all the more surprising as the Secretariat and Madagascar have repeatedly stressed fundraising as one of the biggest challenge of the disposal process.[24,25] Madagascar has also argued that insufficient funds prevent the country from carrying out complete inventories.[26] Removing the payments to alleged owners would significantly reduce the business plan's budget and free much-needed resources that could be allocated to ensuring government agencies are adequately equipped to carry out and enforce a proper inventory. Funding the much-needed national effort to recover the hidden stockpiles as requested by SC69 should also be a priority, as the current Business Plan focuses its effort on auditing only a mere four percent of the overall estimated stockpile in Madagascar (Box 2).

WEAK ENFORCEMENT VS. STRONG CRIMINALS

"Enforcement aspects relating to the operations", as cited in SC69 Doc. 49.2 paragraph 34, are still insufficiently addressed. While the Business Plan clearly identifies several threats – weak security, the potential of access being denied to declared wood sites, risks of theft and substitution -- mitigation measures remain vague.

In addition, the SC has repeatedly emphasized the pivotal importance of enforcement and prosecution of illegal timber barons since adoption of the first Action Plan in 2013.[32,33] At SC69, Parties once again requested that Madagascar focus on "significantly strengthening control and enforcement measures against illegal logging and export at the national level, including seizures, investigations, arrests, prosecution and sanctions, including towards high-level offenders".[34] Good governance, accountability and effective law enforcement are the most important bulwarks against corruption and environmental crime.

The compensation scheme is evidence of the power that remains in the hands of Madagascar's timber barons. As of today, not one has been prosecuted and sentenced, and there is no indication that Madagascar has made noticeable efforts to break up powerful criminal networks and stop high-level offenders. A recent investigation led by the Organized Crime and Corruption Reporting Project (OCCRP) with support from TI and AVG indicates that the criminal rosewood trafficking networks are still operating


Photo Credit: OCCRP, 2018

in Madagascar with impunity.[35] The investigation further reveals that the price of the logs offered to prospective buyers is directly influenced by the level of political patronage that the buyer can ensure.[36] An influential trader told undercover investigators that most of the Asian buyers who are currently obtaining Malagasy rosewood despite the embargo are protected by political allies in high places, including the office of the President.[37] The investigation confirms that accomplices in the police, army, customs and regional politics are essential for the ongoing trafficking operations. The findings also indicate that organized criminal networks have used sophisticated transshipment strategies in order to confound officials and cover the tracks of the rosewood traffic.[38] Active network nodes include Mauritius, Mombasa (Kenya), La Reunion, Mayotte and even Comoros.[39]

INTERNATIONAL EXPERTS DISAGREE WITH THE BUSINESS PLAN

Unlike its previous version, the Business Plan submitted to the SC at SC70 has been subject to consultation with international experts and civil society. Civil society representatives are meant to be part of the different ad hoc structures in charge of supervising and observing the process. Although the exact mandate and access for independent civil society monitors in the process remains vague, AVG, EIA and TI commend the progress that has been made, as well as the integration of increased traceability procedures included in the disposal plan.

Improvements notwithstanding, it is worth noting that the majority of experts invited to the workshop organized in June 2018, in cooperation with the ITTO on "Securing and Disposing of Stockpiles of Precious Woods in Madagascar," opposed several key elements of the disposal process, most of them described in this brief.[40]

These criticisms were reiterated recently by representatives of local and international civil society, cooperation agencies and diplomats during a preparatory meeting to SC70 called by the Ministry of Environment in September 2018. Participants to this meeting acknowledged the positive steps but warned against the current formulation of the Business Plan. However, as reported by participants, the Ministry of Environment did not take the results of consultations into account.

CONCLUSION

The Business Plan that the Government of Madagascar proposes to the SC70 in 2018 puts at risk the wild populations of Dalbergia spp. and Diospyros spp in Madagascar, threatens the integrity of the Convention, undermines the rule of law, and sets a dangerous precedent for future stockpile disposals around the world. Improvements on the timing, logistics of the disposal, and governance of the project do not offset the fundamental problems raised by the Business Plan.

AVG, EIA and TI strongly recommend that Parties do not approve the Business Plan in its current form at SC70, and requests further revisions to address outstanding concerns, including:

- Establishing robust financial oversight mechanisms and impact monitoring on wild populations;

- Removing the "indemnification" for timber traffickers – in every shape and form, while increasing enforcement actions against major offenders; and

- Developing and implementing a national effort to recover hidden stockpiles as part of phase 1 of the Business Plan.

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